JUL 23 2010

Case No. 09-1558

IN THE
SUPREME COURT OF THE UNITED STATES

LORENE YOUNG

Petitioner,

v.

CARGILL, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Was Cargill entitled to summary judgment as a matter of law under applicable Florida law?

Is Cargill entitled to Employer Immunity based on Florida's Workers' Compensation Act, Section 440.11(2), Fla. Stat. §§440.01-440.60 (2000)?

Was Lorene Young appropriately deemed an "employee" of Cargill under Florida law?

Did the District Court and Court of Appeals err in concluding that summary judgment was appropriate under applicable Florida law?

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INTRODUCTION

Petitioner Lorene Young's ("Petitioner") Petition for Writ of Certiorari (the "Petition") highlights her fundamental misunderstanding of the role of the Supreme Court. She seeks to introduce new evidence, relitigate facts, and manufacture a split between circuits where one does not exist—all of which is not permitted at this level of review. Borrowing from the words of Justice Stewart, "the only remarkable thing about this case is its presence in this Court... [f]or the case involves no more than the application of well-settled principles to a familiar situation and has little significance except for the respondent." *Butz v. Glover Livestock Commission Co., Inc.* 411 U.S. 182, 189 (1973)(Stewart, dissenting).

STATEMENT OF THE CASE

In the fall of 2000, Cargill, Inc. ("Cargill") entered into a joint venture with SunPure, Limited, and began operating Avon Park, an existing juice processing facility, which was located in Frostproof, Florida.[1] The Avon Park facility processes oranges and grapefruits into either a concentrate form or ready-to-drink juice.[2]

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[1] *See* Deposition of Larry Hadden, p. 14, attached as Ex. A to Cargill Juice North America, Inc.'s Motion for Summary Judgment.

[2] *See* Deposition of Larry Hadden, p. 17, attached as Ex. A to Cargill Juice North America, Inc.'s Motion for Summary Judgment.

Pursuant to the terms of a Service Agreement[3] with Cargill, KC Cromwell Inc. ("KC Cromwell") filled two job classifications at the facility: lead person/forklift and operator and general laborer, and also provided an on-site management team to supervise KC Cromwell's employees. *See Young v. Cargill Juice North America, Inc.*, 2008 U.S. Dist. LEXIS 100902 (M.D. Fla., Dec. 15, 2008)[4] at *2-3. The Service Agreement also required KC Cromwell to purchase and maintain certain types of insurance coverage, including workers' compensation insurance coverage. *Id.* at *4.

Petitioner was employed by KC Cromwell and was assigned to work at Cargill's Avon Park plant in October 2001. *Id.* at *3-4. Approximately one month later, she was promoted to "Lead Supervisor." *Id.* As a Lead Supervisor, Petitioner received work assignments and directed questions, concerns or complaints to a Cargill employee. *Id.*

Cargill uses anhydrous ammonia as part of its evaporation process to create juice concentrate. *Id.* at *4-5. On December 29, 2001, an ammonia release occurred, resulting in the evacuation of numerous employees to the hospital for evaluation. *Id.* at *5. Petitioner claims that she received "personal and psychological injuries" as a result of her exposure to ammonia. *Id.*

Petitioner received workers' compensation benefits for her medical expenses and lost wages

[3] The Service Agreement is attached to the Petition as Appendix F.

[4] Attached to the Petition as Appendix E.

arising out of the December 29, 2001 incident.[5] In addition, Petitioner filed a complaint asserting claims of intentional misconduct against both Cargill and K.C. Cromwell. *Young, supra*, at *6. Petitioner alleged that her injuries resulted from Cargill's failure to "properly inspect, maintain, and/or repair its equipment." *Id.* In addition, Petitioner alleged that Cargill knew that its equipment was in need of repair, that other ammonia leaks had occurred because of faulty or defective equipment, and that another ammonia leak was virtually certain to occur. *Id.* Petitioner further alleged that Cargill knew its equipment created a dangerous condition, but intentionally chose to disregard the danger and instructed its employees to work in these conditions without warning employees of the danger or implementing appropriate safety measures and training. *Id.* As one of its several affirmative defenses, Cargill asserted that Petitioner's claims were barred by the immunity conferred by Florida's workers' compensation law. *Id.* at *6-7.

After discovery, Petitioner moved to amend her complaint to add a claim of negligence against Cargill on May 8, 2008. *Id.* at *12. Cargill opposed Petitioner's motion because the incontrovertible evidence, including Petitioner's own factual allegations, demonstrated that Cargill was Petitioner's "statutory" or "special" employer within the meaning of the Florida's workers' compensation law and, thus, was immune from any claim of

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[5] *See* Deposition of Lorene Young, pp. 217-218, which is attached as Ex. E to Cargill Juice North America, Inc.'s Motion for Summary Judgment.

negligence under Florida law. *Id.* The district court judge agreed and denied Petitioner's motion to amend as futile in an order dated May 28, 2008. *Id.*

Thereafter, the parties filed cross-motions for summary judgment on Petitioner's sole claim of intentional tort. *Id.* at *7-8. In an order and opinion dated December 15, 2008, the district court granted Cargill's motion for summary judgment, denied Petitioner's cross-motion for summary judgment, and dismissed the case in its entirety, with prejudice. *Id.* at *28-29. The district court held that Cargill qualified as a "special employer" for purposes of Florida workers' compensation immunity.[6] *Id.* at *13-14. Likewise, the court held that Petitioner had not established a genuine issue as to any material fact that might lead a jury to find that a reasonable employee in Cargill's position should have known that injury or death to Petitioner was substantially certain to occur. *Id.* at *28.

On appeal to the U.S. Court of Appeals for the Eleventh Circuit, Petitioner argued that the "intentional tort" exception to workers' compensation immunity applies to the facts of this case. *Young v. Cargill Juice North America, Inc.*, 242 Fed. Appx.

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[6] The district court specifically analyzed whether Cargill was a "special employer" under Florida's Workers' Compensation Act noting that workers' compensation immunity extends to employers that utilize "the services of employees of a help supply service company, as set forth in Standard Code Number 7363" when such employees are acting in furtherance of the employer's business. Fla. Stat. §440.11(2). *Young*, U.S. Dist. LEXIS 100902 at *10-14, which is attached as Appendix E to the Petition.

585, 585 (11th Cir., Sept. 9, 2009).[7] The court of appeals disagreed and affirmed the granting of summary judgment. *Id.* Thereafter, Petitioner filed the Petition with this Court.

REASONS FOR DENYING THE PETITION

A petition for a writ of certiorari will be granted only for one of the following compelling reasons:

- a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

- a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; or

- a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an

[7] Attached to the Petition as Appendix G.

> important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10 ("Review on a writ of certiorari is not a matter of right, but of judicial discretion."). A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. *Id.*

A. The Court Of Appeals' Decision Does Not Conflict With The Decision Of Any Other Court Of Appeals Or With Any Decision Of This Court.

The Court has stated that it is "very important" that it be consistent in not granting the writ of certiorari except in cases "involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority ***between the circuit courts of appeal.***" *See Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)(dismissing writ of certiorari improvidently granted after Court determined that the circuits were not in conflict). (Emphasis added). Petitioner claims her Petition should be granted because of a conflict between the Middle District of Florida, the Ninth Circuit Court of Appeals, and a state appellate court in Ohio regarding: (1) what constitutes a genuine issue of material fact; (2) what constitutes the difference between an employee and an independent contractor; and (3) what constitutes gross

negligence.[8] But this argument must fall from its own weight.

First, Petitioner has not established that a conflict exists between circuit courts of appeal, but merely claims a conflict between: (1) a district court in Florida; (2) a circuit court; and (3) an Ohio appellate court.[9] As this is not a split between the circuit courts of appeals, this is insufficient to warrant Supreme Court review. *See* Sup. Ct. R. 1; *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951)(Supreme Court will grant certiorari "only in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.").

Second, no such conflict exists. Petitioner cites to a myriad of inapposite cases and statutes, including three bankruptcy cases and an irrelevant South Carolina case, in which the court held that an employer properly fired employees for their gross negligence.[10] None of these cases or statutes demonstrate a split between courts.

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[8] *See* Petition, p. 26. At first, Petitioner claims that there "is a conflict of decisions between the Middle District of Florida and the 9th Circuit Court of Appeals and the Appellate court of Ohio," about what "institutes a genuine material issue of fact." Petition, p. 10. In her conclusion, Petitioner expands her argument by claiming conflicts in several areas of state law.

[9] *See* Petition, p. 26.

[10] *See* Petition, pp. 24-26.

This case involves a district court's routine application of well-established law. The standard used to decide whether summary judgment is appropriate is determined by federal procedural law; however, "the materiality of the facts is determined with reference to the applicable substantive law." *Textron Fin. Corp. v. Lentine Marine Inc.*, 630 F. Supp. 2d 1352, 1355 (S.D. Fla. 2009), citing *Allen v. Tyson Foods*, 121 F.3d 642, 646 (11th Cir. Ala. 1997). In diversity suits, the substantive law is generally the law in the forum state in which the district court sits. *Id.* Accordingly, the district court in this case used the summary judgment standard under Fed. R. Civ. P. 56, but applied Florida law in determining the materiality of the facts.[11]

The Court of Appeals' decision in this case clearly tracks settled law. Florida law specifically extends workers' compensation immunity to an employer who uses the employees of a "help supply services company." Fla. Stat. §440.11. "An employee so engaged by the employer shall be considered a borrowed employee of the employer, and, for the purposes of this section, shall be treated as any other employee of the employer." Fla. Stat. §440.11(2). Employee leasing companies, temporary help services, and labor pools are "help supply service companies" for purposes of the Florida workers' compensation laws. *See Caramico v. Arteraft Indus. Inc.*, 727 S. 2d 348, 349 (Fla. 5th Dist. 1999). To be entitled to immunity, employers in Florida need only "utilize the service" of the help supply company

[11] The district court decision is attached as Appendix C to the Petition.

employee and the employee must be "acting in furtherance of the employer's business." Fla. Stat. §440.11. Such employers are "liable for and shall secure the payment of compensation to all such borrowed employees as required in Fla. Stat. §440.10, except when such payment has been secured by the help supply services company." *Id.*

In this case, it was undisputed that Petitioner was employed as a day-to-day employee by KC Cromwell, a "help supply services company."[12] Pursuant to the Service Agreement between Cargill and KC Cromwell, Cargill requested, and KC Cromwell provided, Petitioner and other temporary employees to work at the Avon Park facility to further Cargill's business. *Id.* at *2-3. And pursuant to the Service Agreement between KC Cromwell and Cargill, KC Cromwell maintained workers' compensation for Petitioner—and Petitioner received workers' compensation benefits for her alleged injuries pertaining to the incident on December 29, 2001. *Id.*[13] In other words, Cargill fulfilled its responsibilities and obligations as a statutory employer under Fla. Stat. §449.11(2) and secured payment of compensation to Petitioner through KC Cromwell, a "help supply services company" within the meaning of the Act. *See also, Latite Roofing & Sheet Metal Co. v. Barker*, 886 So.2d 1064 (Fla. 4th Dist. 2004)(where a roofing company had made sure that a subcontracted employer of an injured worker

[12] *See Young*, 2008 U.S. Dist. LEXIS 100902 at *2-4, 11, attached to the Petition as Appendix E.

[13] *See also*, Deposition of Lorene Young, pp. 217-218 which is attached as Ex. E to Cargill Juice North America, Inc.'s Motion for Summary Judgment.

had compensation coverage for the worker's injury on the subcontracted job, the roofing company was entitled to workers compensation immunity as a statutory employer); *Stephens v. Gencorp, Inc.*, 549 So.2d 1051 (Fla. 4th Dist. 1989)(in negligence action brought by an employee, the employer was immune from liability because the employer was the statutory employer and because the employee had received workers compensation benefits).

Petitioner's attempts to draw a parallel between this case and the *Crawford* case are misguided. *Crawford v. Florida Steel Corp*, 478 So.2d 855 (Fla. 1st Dist. 1985). In *Crawford*, there was no contract between the general and special employer, a factor that the court found to be "essential to the special employee status" required to establish workers' compensation immunity. In stark contrast, in this case, Cargill and KC Cromwell had a detailed Service Agreement regarding the borrowed employees' services and specified which company was responsible for paying for workers' compensation for those borrowed employees.[14] Accordingly, the *Crawford* case is mapposite.

B. Petitioner Cites To Non-Florida Law In Her Attempt To Manufacture A Conflict Where None Exists.

As to questions controlled by state law, conflict among circuits is not of itself a reason for granting a writ of certiorari especially when the

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[14] *Young*, 2008 U.S. Dist. LEXIS 100902 at *2-3 attached to the Petition as Appendix E.

conflict is merely corollary to a permissible difference of opinion in the state court. *Ruhlin v. New York Life Insurance Co.*, 304 U.S. 202, 206 (1938). Historically, the workers' compensation statutes arose on a state-by-state basis because of the general failures of the tort system to afford adequate relief to workers injured in the course of their employment. PROSSER AND KEETON ON TORTS (5th Ed. West 1984), pp. 568-574. *See Scott v. Amec Kamtech, Inc.*, 583 F. Supp. 2d 912, 918-919 (E.D. Tenn. 2008)(noting different results under Texas and Tennessee workers compensation frameworks in a choice of law case).

Congress itself has expressed its intention to grant states the discretion to administer their workers' compensation free from federal court intervention. Under 28 U.S.C. 1445(c), a civil action in any state court arising out of the workers' compensation laws of such state may not be removed to federal court. The statute "reflects a congressional concern for .the states' interest in administering their own workers' compensation schemes." *Vasquez v. North County Transit District*, 292 F.3d 1049, 1061, n.6 (9th Cir. 2002). Thus, whether a company is granted immunity for negligence under Florida's workers' compensation statute, does not, and should not, control whether that same company under identical circumstances would be granted workers' compensation immunity under Ohio's workers' compensation statute, or any other similar state statute. Accordingly, Petitioner's certified questions are controlled by state law and not properly before this Court.

C. Petitioner Is Trying To Relitigate Facts.

In her Petition, Petitioner is merely trying to relitigate facts and debate the sufficiency of evidence which has already been weighed by the district court. In an attempt to cloud the issues in this case and create a federal question or a conflict among the circuits where there is none, Petitioner goes even further and attempts to introduce evidence that was not part of the record before the Eleventh Circuit Court of Appeals and is not admissible at this stage of review. The introduction and reliance on new evidence at this stage of review is inappropriate. *Holmes v. Trout*, 32 U.S. 171, 210 (1833)("No evidence can be looked into in this court, which exercises an appellate jurisdiction, that was not before the circuit court; and the evidence certified with the record must be considered here, as the only evidence before the court below.").

D. The Petition Does Not Present Any Question Of Exceptional Importance Worthy Of This Court's Attention.

This is a personal injury case that may have significant importance to Petitioner, as an unsuccessful litigant, but does not involve principles of importance to the public at large. Petitioner makes a fleeting reference to great public interest in "the environmental concerns about how green our planet should [be]."[15] Yet, this case does not involve federal environmental statutes or regulations, nor does it involve personal injuries affecting large

[15] *See* Petition, p. 26.

numbers of Americans. Quite simply, this is a personal injury case involving an isolated ammonia release on December 29, 2001--and to Cargill's knowledge, Petitioner was the only individual to ever have claimed to have suffered more than minor irritation from the ammonia release.[16] For this additional reason, the petition should be denied.

CONCLUSION

For all of the above referenced reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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[16] *See* Affidavit of Larry Hadden at ¶6, which is attached to Cargill Juice North America, Inc.'s Motion for Summary Judgment